

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,)
)
) CASE NO. 2:16-cr-137 PPS-PRC
v.)
)
DANIEL LABUDA)

GOVERNMENT'S SENTENCING MEMORANDUM

Defendant Daniel Labuda pled guilty to one count of receiving child pornography in violation of 18 U.S.C. § 2252(a)(2). Neither the facts of the offense nor the sentencing guideline calculations are in dispute. Defendant's statutory sentencing range is five to 20 years and his guideline range is 97 months to 121 months. For the reasons explained below, the United States recommends that Defendant receive a guideline-range sentence of 97 months in prison.

Summary of the Offense

The Federal Bureau of Investigation (FBI) received a lead that on August 18, 2013, someone using an Internet Protocol (IP) address assigned to Defendant had attempted to access "The Onionpedo Video Archive," a website featuring child pornography videos accessible via the Tor network.¹

¹ The Tor network is designed to facilitate anonymous communication over the internet. In order to access the Tor network, a user must install Tor software either by downloading an add-on to the user's web browser or by downloading the free Tor browser. A criminal suspect's use of Tor makes it extremely difficult for law enforcement agents who are investigating a website to detect the host's, administrator's, or user's actual IP addresses or physical locations.

On April 4, 2014, law enforcement officers visited Defendant's residence, and Defendant agreed to speak with the agents. Defendant admitted that he had accessed a website containing child pornography via the Tor network, but denied that he had downloaded or intentionally saved child pornography on his computer. Defendant told the agents he could not recall which device he was using when he accessed the illicit child pornography sites.

Law enforcement seized several devices from Defendant's residence and obtained a federal search warrant to forensically examine them. The forensic examination revealed child pornography stored on the three devices listed in Paragraph 7(e) of the Plea Agreement. The child pornography images and videos found on Defendant's devices depicted graphic sexual abuse of extremely young children, including toddlers. Defendant also possessed images and videos that portray sadistic and masochistic conduct and other depictions of violence.

Some examples of specific images and videos found on the defendant's devices are as follows:

- “10Yo Bedroom Anal.mpg”: This video depicts a prepubescent minor female on a bed. Her legs are spread to expose her genitalia. An adult male anally penetrates her with his penis.
- “3yo_sucking_cum_in_mouth.3gp”: This video depicts an adult male inserting his penis into the mouth of a toddler aged child.
- “26bb.jpg”: This is a still image of a prepubescent minor female, who appears to be less than 10 years old. She is nude from the waist down. She is lying on her back on a blanket, with her knees up and spread apart, exposing her genitalia. In her hands she is holding what appears to be a sex toy.

- “an-33-002.jpg”: This is a still image of a prepubescent minor female. She is fully nude in what appears to be a studio setting. She is standing with her legs spread to expose her genitalia.

In total, the forensic examination identified over 390,000 and over 1,900 videos depicting the sexual exploitation of minors. Nearly 12,000 of these images and videos depict known victims who have been identified by the National Center for Exploited and Missing Children (NCMEC).

Sentencing Recommendation²

The nature of the charge to which the defendant has pleaded guilty, receiving child pornography, in and of itself calls for a substantial term of imprisonment. This is not a victimless crime. The victims are and continue to be the children depicted in the images. The “use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child” used in the production of the pornographic material. *Osborne v. Ohio*, 495 U.S. 103, 109 (1990).

Furthermore, collecting child pornography images feeds a market that preys upon other children by creating a demand for more of the images. *Osborne v. Ohio*, 495 U.S. 103, 109-11 (1990).

The volume and nature of the images and videos that Defendant had on his electronic media is alarming. The forensic examination of Defendant’s electronic media revealed hundreds of thousands of files of child pornography, a staggering number compared to other cases in this district. These include extremely disturbing

² The government received 17 restitution requests. The parties intend to resolve the issue of restitution prior to the sentencing hearing via a separate joint filing.

images depicting the anal and oral penetration of prepubescent victims, and victims as young as toddler-aged.

Given the repeated and egregious nature of Defendant's conduct and the need to deter likeminded individuals from committing similar crimes, the government asks and recommends that he receive a sentence of 97 months in prison.

Respectfully Submitted,

THOMAS L. KIRSCH II
UNITED STATES ATTORNEY

By: /s/ Abizer Zanzi
Abizer Zanzi
Assistant United States Attorney
United States Attorney's Office
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320
Telephone: (219) 937-5500
Facsimile: (219) 852-2770
E-mail: Abizer.Zanzi@usdoj.gov

/s/ Leslie Williams Fisher
Leslie Williams Fisher
Special Assistant United States Attorney
Eastern District of Virginia
101 W. Main St., Suite 8000
Norfolk, Virginia 23510
Phone: (202) 616-2557
Fax: (202) 514-1793
Email: Leslie.Fisher2@usdoj.gov
Virginia Bar No. 77470

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which notified counsel of record.

s/ Abizer Zanzi
Assistant United States Attorney

OFFICE OF:

United States Attorney
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320
Tel: (219) 937-5500
Fax: (219) 852-2770